IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.18802 of 1999

D. Santhappan .. Petitioner

-Vs-

1. IBP Company Ltd.
rep. by its General Manager
10, Mayor V.R.Ramanathan Road
Chetpet, Chennai 600 031.

2. The Divisional Manager
(Chennai Division)
IBP Company Ltd.
10, Mayor V.R.Ramanathan Road
Chetpet, Chennai 600 031.

3. The Regional Manager
IBP Company Ltd.
10, Mayor V.R.Ramanathan Road
Chetpet, Chennai 600 031. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioner : Mr.K.N. Basha
For Mr. Ashok Kumar

For Respondents : Mr.K. Kumar, ACGSC

:O R D E R

It is a typical case where the petitioner, an unemployed graduate, is challenging an arbitrary, unreasonable, capricious and perverse act of the respondents in cancelling the dealership granted to the petitioner under Social Objective Scheme on a vague and unsustainable ground, viz. the petitioner has failed to promote the sales of the products marketed by the company to the satisfaction of the company, by the impugned order dated 11.11.1999, quoting Clause 12(a)(i) of the agreement entered between the petitioner and the respondent Corporation, by exercising the power conferred under Clause 24 of the said agreement.

2. Admittedly, the petitioner was a successful applicant selected for the dealership in petroleum products by the petroleum Corporation, viz. High Speed Diesel under the category of unemployed graduates including unemployed Engineering graduates, supported by a Social Objective Scheme of the Government of India. The qualification and the merit of the petitioner for the above dealership was not disputed by the respondent Corporation.

3.1. Concededly, the public sector oil companies, in consultation with the Ministry of Petroleum, Government of India, have drawn up a scheme for the development of retail outlet Superior Kerosene Oil/ Light Diesel Oil (SKO/LDO) and Liquified Petroleum Gas (LPG) distributorship all over the country reserving 70% of these dealership and distributorship under the Social Objective Scheme.

3.2. The Social Objective Scheme is intended to benefit the following four categories of applicants.
(a) SC / ST - 25%
(b) unemployed graduates including unemployed Engineering graduate - 25%
(c) physically handicapped / Government Personnel disabled on duty / widow of Government Personnel who died in the course of the duty - 15%
(d) freedom fighters - 5%.

3.3. Realising the hardships that this class of dealers would be facing for raising adequate finance, a scheme was formulated to assist them by granting loans by banks on concessional terms both for working capital as well as term loan requirements. Accordingly, credit facilities would be given for
(a) the purchase of stock in trade,i.e. petrol, diesel, lubricants, kerosene, light diesel oil and liquified petroleum gas. For this purpose, working capital to the extent of 75% of their total requirements will be given by the Public Sector Banks, and
(b) purchase of machinery/equipment required for their conducting business, like service station and for construction of building, godown etc. They would be granted 'term loan'. Here again, 75% of the total requirements will be given by the Public Sector Banks as term loan.

These financial assistance under the Social Objective Scheme were included under priority advances.

3.4. As per Clause I of Appendix I of the Social Objective Scheme, oil companies would proceed storing and dispensing equipments like underground storage tanks and dispensing pumps towards which the oil companies recover licence fee which is approved by the Ministry of Energy (Department of Petroleum). Accordingly, the distributor is expected to bear the expenses related to the civil construction like construction of sales room, boundary walls, road etc. and for buying equipments for dispensing of lubricating oils provision of air facilities (air compressor, air guage) service station equipments wherever required.

3.5. A harmonious reading of the above clause of Social Objective Scheme would make it clear that the said scheme is intended to give a permanent social security to the dealers/ distributors, who were classified as beneficiaries under the Social Objective Scheme, but not intended as a temporary measure of social security, otherwise, the very object of the scheme would be defeated. Of course, such object has to be achieved subject to the compliance of the terms and conditions by the dealer and distributor. In other words, the beneficiaries under the Scheme are not intended to violate any terms of the agreement, which is of course a non statutory contract.

3.6. In the instant case, pursuant to the grant of dealership to the petitioner under the Unemployed Graduate Category, an agreement was entered into between the petitioner and the respondent Corporation on 25.3.1987. In the agreement dated 25.3.1987, Clause 1 provides that the petitioner was appointed as a dealer for High Speed Diesel, Clause 2 provides that the agreement would remain in force for a period of 15 years and thereafter, it is at the option of the respondent Corporation to enter into a fresh agreement with the dealer for a further period of five years on the same terms and conditions.

3.7. A reference to Clause 12 and 13 of the said agreement is also relevant. Clause 12 of the agreement deals with the terms and conditions that are to be complied with by the dealer, while Clause 13 of the agreement provides the terms and conditions to be complied with by the company. These terms and conditions which are binding on the respective parties to the agreement and they should be scrupulously complied with by both the parties, during the period of contract, viz. 15 years. Any violation to Clause 12 of the agreement empowers the respondent Corporation to terminate the contract.

3.8. However, there is no provision under the terms of the agreement to protect the interest of the dealer when violations are committed by the company. The power to terminate the contract is found under two Clauses, viz. Clause 14 and 24.

3.9. The agreement is silent under which facts and circumstances of the case a company can invoke Clause 14 of the agreement even though Clause 24 of the agreement prevails over Clause 14 of the agreement, in view of the non obstante clause. In thi gard, it is relevant to extract both Clause 14 and Clause 24 of the agreement, which read as under.
Clause 14:
This Agreement may be terminated by either party giving to the other not less than thirty days' notice in writing of its intention to terminate it and upon the expiration of such notice this Agreement shall stand cancelled and revoked but without prejudice to the rights of either party against the other in respect of any matter or thing antecedent to such termination. Provided however that the requisite period of notice may be reduced or waived by mutual consent.

Clause 24:
Notwithstanding anything to the contrary hereinabove contained the Company

shall be entitled to terminate this Agreement forthwith and without notice upon or at any time after the happening of any of the events following:
(a)If the Dealer or the proprietor or any individual partner of the Dealer/s firm shall die or be adjudicated insolvent or upon dissolution of the firm for any reason whatsoever or if the Dealer/s being a Company go into liquidation, either voluntarily or otherwise or in the case of a Municipality if it is superseded by order of Government.
(b)If an attachment is levied by order of Court upon the said outfit or any goods for the time being stored upon the premises of the facilities.
(c)If the Dealer/s licence/s for the storage of petroleum products upon the premises of the said outfit is/are cancelled or revoked.
(d)If the Dealer/s for any reason other than the Company's default fail to maintain supply to the public for any period exceeding twenty four hours.
(e)If the Dealer/s fail to make payment of their outstanding within fourteen days of demand in writing by the company.
(f)If the Dealer/s shall be guilty of a breach of any of the covenants and stipulations on their part contained in Clause 12 hereof.
(g)If the Dealer/s shall commit or suffer to be committed any act, which in the opinion of the Manager of the Company for the time being in 10 Spur Tank Road, Chetpet, Madras 600 031 whose decision shall be final, is prejudicial to the interest or good name of the Company or its products.
(h)Upon termination of any other agreement between the parties without prejudice to any other right or remedy reserved thereunder.
(i)If the Dealer fails to perform and observe any stipulation herein contained.

3.10. Clause 14 of the agreement could be invoked by either of the parties giving 30 days notice in writing of its intention to terminate the contract. Proviso to Clause 14 of the agreement however provides the waiver of notice by mutual consent. A bare reading of Clause 14 makes it clear that it is intended only in a case where Clause 24 of the agreement is not attracted.

3.11. Under Clause 24 of the agreement, the Company is empowered to terminate the agreement under the following occasions, viz. when the dealer become insolvent; if the premises is attached by the Court order; if the licence is cancelled or revoked; if the dealer fails to maintain supply to the public; if the dealer fails to make the payment within the stipulated time; if the dealer is guilty of any breach of the covenant contained in Clause 12 of the agreement; if the dealer commits or suffers to commit any act prejudicial to the interest or good name of the company; upon termination of any other agreement between the parties without prejudice to any other right or remedy reserved; and if the dealer fails to perform and observe any stipulation herein contained.

3.12. Exercising this power under Clause 24(f) read with Clause 12(a)(i) of the agreement, a show cause notice dated 15.10.1999 was issued to the petitioner proposing to terminate the dealership awarded to him, which reads as under.
"Ref: GD/MDS/18
15th October, 1999

M/s. Arula Agencies
Cuddalore Salem Road
Virudhachalam 606 003.
South Arcot Dist.

SHOW CAUSE NOTICE

Sub: Termination of License under Agreement dated 25.3.1987 - Show Cause Notice - Regarding.

We refer to the Indenture of MS and HSD Dealer Agreement for dealer owned site made between us on 25.03.1987 and specifically to Clause 12 (a)(i) and 24(d) and (f) which are extracted hereunder:-

Clause 12:

The Dealer/s hereby covenant and agree with the Company as follows:-

(a)(i)To promote the sales of the products marketed by the Company to the satisfaction of the Company.

Clause 24

Notwithstanding anything to the contrary hereinabove contained the Company shall be entitled to terminate this Agreement forthwith and without notice upon or at any time after the happening of any of the events following:-

(d) If the Dealer/s for any reason other than the Company's default fail to maintain supply to the public for any period exceeding twenty four hours.

(f) If the Dealer/s shall be guilty of a breach of any of the covenants and stipulations on their part contained in Clause 12 hereof.

We refer to our various letters regarding your dryouts and poor performance since March, 1992 especially our letters dated 26.09.98, 09.05 .99 and 11.08.99.

In the above circumstances, please SHOW CAUSE why the license granted to you as per the Indenture dated 25.03.1987 should not be terminated as on 05.11.1999. Any explanation you wish to offer may be in writing and should reach us on or before 28.10.99.

Yours faithfully,
For IBP Co. Limited,

Sd/-
DIVISIONAL MANAGER "

3.13. On receipt of the said show cause notice dated 15.10.1999, the

petitioner submitted his explanation dated Nil which was received by the Corporation on 27.10.1999. In the said explanation, the petitioner stated that in spite of his information to the Corporation about the leakage of water in the tank on 17.12.1998, the respondent Corporation had not paid due attention to the said complaint, and that the Assistant Manager, by name Ajit Nair was threatening to hand over the retail outlet to somebody else and therefore, the reason to terminate the contract is not bona fide.

3.14. However, the respondent Corporation, by order dated 11.11.1999 terminated the dealership, which reads as under.
"Ref: TN/63
11th November 1999

M/s. Arula Agencies
Cuddalore Salem Road
Virudhachalam 606 003
South Arcot District.

Dear Sirs,

Sub: Termination of Dealership Agreement dated 25.03.87.

This has reference to the Show Cause Notice dated 15.10.99 wherein we had issued notice as to why the license granted to you as per indenture dated 25.03.87 should not be terminated.

We have also asked your explanation in Show Cause Notice to reach us on or before 28.10.99.

After careful consideration of the materials and the explanation offered by you vide your written reply dated nil received on 27.10.99, we are to inform you that we are not satisfied as the same is not in accordance with the terms and conditions agreed between us vide the Dealership Agreement dated 25.03.87. We hereby reject the explanation offered in your reply letter, as per the terms and conditions of the Dealership Agreement dated 25.03.1987 Clause 12 and 24, as reproduced below:

Clause 12 The Dealer/s hereby covenant and agree with the Company as follows:

(a)(i) To promote the sales of the products marketed by the Company to the satisfaction of the Company.

Clause 24 Notwithstanding anything to the contrary hereinabove contained the Company shall be entitled to terminate this Agreement forthwith and without notice upon or at any time after the happening of any of the events following:-

(d) If the Dealer/s for any reason other than the Company's default fail to maintain supply to the

public for any period exceeding twenty four hours.

(f) If the Dealer/s shall be guilty of a breach of
any of the covenants and stipulations on their part
contained in Clause 12 hereof.

It is a clear case of breach of agreement and therefore, we hereby terminate the Dealership Agreement dated 25.03.87.

You are requested to hand over the Company equipments to us immediately.

Thanking you

Yours faithfully,
For IBP Co. Ltd.

Sd/-
GENERAL MANAGER - SR "

4. Aggrieved by the above order of termination dated 11.11.1999, the petitioner has preferred the above writ petition.

5.1. Mr.K.N. Basha, learned counsel for the petitioner assails the impugned order of termination on the ground of malafide, arbitrary exercise of power, contending that both the show cause notice and the final order suffer from vagueness and that the decision of the respondent in terminating the dealership is arbitrary and unreasonable, as per the decision in HARBANSLAL SAHNIA & ANOTHER v. INDIAN OIL CORPORATION LTD. & OTHERS reported in 2003 (1) CTC 189.

5.2. The learned counsel for the petitioner, to buttress his argument, invited my attention to the representations of the petitioner dated 21.12.1998 and 6.1.1999 and the legal notice dated 13.4.1999, issued on behalf of the petitioner, as well as the correspondence of the respondent Corporation dated 11.8.1999, just two months prior to the show cause notice dated 15.10.1999, and submits that the very reference to various letters regarding the dry outs and poor performance since March 1992 relied upon in the show cause notice is unsustainable in law as the said allegation was not found in the letter dated 11.8.1 999 which was made just two months prior to the show cause notice.

5.3. He further contends that only when the petitioner requested the respondent Corporation by his letter dated 21.12.1998 and 6.1.1999, to rectify the leakage of the tank and complained about the inaction of the company in this regard, which necessitated the petitioner to issue a legal notice dated 14.4.1999, the respondent proposed to initiate the impugned proceedings to terminate the dealership of the petitioner stating that the petitioner failed to promote the sale to the satisfaction of the company, quoting Clause 12(a)(i) of the agreement. Mr.K.N. Basha, also brought to my notice that the legal action proposed by the petitioner pursuant to the notice dated 14.4.1999

was also made to be withdrawn by the petitioner in his letter dated 5.7.199 9, at the instance of the respondent Corporation. According to the learned counsel, these materials apparent on the face of record would disclose the malicious attitude on the part of the respondent Corporation in initiating action against the petitioner in terminating the dealership.

6.1. Antagonizing these contentions, Mr. Kumar, learned Additional Central Government Standing Counsel appearing for the respondents, at the outset, took a strong objection that the writ petition is not maintainable in law, as the termination of a non statutory contract by the respondent Corporation cannot be tested under judicial review, invoking Article 226 of the Constitution of India, placing reliance on JENARATHANAN, B v. THE SENIOR REGIONAL MANAGER, HINDUSTAN PETROLEUM CORPORATION reported in 2000 (1) LW 502, SITARAMAN, S. v. HINDUSTAN PETROLEUM CORPN. LTD. reported in 2000 WLR 739, B. VENKATASAMY v. G.M. SOUTHERN RAILWAY reported in 1998 (1) CTC 269, M/s. SWAMY SERVICE STATION v. BHARAT PETROLEUM CORPORATION LIMITED reported in (2002) 1 MLJ 740, which were supported by decisions of Division Bench of this Court in GENERAL MANAGER, I.B.P.CO. LTD. v. JAYANTHI SELVARAJAN reported in 2000 WLR 807, SITARAMAN, S. v. HINDUSTAN PETROLEUM CORPN. LTD. in W.A.No.2609 of 1999, UNION OF INDIA REP. BY ITS SECRETARY TO GOVT., MINISTRY OF PETROLEUM AND NATURAL GASES, NEW DELHI, & OTHERS v. SRI GAYATHRI AGENCIES in W.A.Nos.521 to 527 of 2000, supported by a decision of Allahabad High Court in M/S. KAMLA MOTORS 6 ENGINEERING WORKS v. IBP CO. LTD. reported in 2001 AIHC 437.

6.2. Apart from the above preliminary objection, the learned counsel for the respondent Corporation, on the merits of the case, inviting my attention to the averments in the counter affidavit, contends that the petitioner failed to improve the business in spite of their letters dated 24.3.1992, 2.9.1992, 8.9.1992, 21.9.1992, 22.11.1995, 4.9.1 998, 26.9.1998 etc. It is therefore, contended that only due to the poor performance over the period since 1992, the respondent was constrained to terminate the dealership by the impugned order. It is also contended that in any event, the dealership itself has come to an end by efflux of contractual period, viz. 15 years from the date of the appointment and therefore, the petitioner is not entitled to seek the relief as prayed for, as a matter of right.

7. I have given careful consideration to the submissions of both sides.

8. The cardinal questions that arise for my consideration in this writ petition are
(i) Whether the petitioner is entitled to seek the relief as prayed for, invoking Article 226 of the Constitution of India, challenging the order of termination?
(ii) Whether the order of termination of dealership is sustainable in law? and
(iii) To what relief the petitioner is entitled to?

9.1. Question No.(i): Whether the petitioner is entitled to seek the

relief as prayed for, invoking Article 226 of the Constitution of India, challenging the order of termination?

9.2. It is true, in JENARATHANAN, B v. THE SENIOR REGIONAL MANAGER, HINDUSTAN PETROLEUM CORPORATION reported in 2000 (1) LW 502, this Court has held that no writ will lie against the order of suspension of dealership made under the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990.

9.3. Similar view has been taken by other Judges in SITARAMAN, S. v. HINDUSTAN PETROLEUM CORPN. LTD. reported in 2000 WLR 739, B. VENKATASAMY v. G.M. SOUTHERN RAILWAY reported in 1998 (1) CTC 269, M/s. SWAMY SERVICE STATION v. BHARAT PETROLEUM CORPORATION LIMITED reported in (2002) 1 MLJ 740, which were supported by decisions of Division Bench of this Court in GENERAL MANAGER, I.B.P.CO. LTD. v. JAYANTHI SELVARAJAN reported in 2000 WLR 807, SITARAMAN, S. v. HINDUSTAN PETROLEUM CORPN. LTD. in W.A.No.2609 of 1999, UNION OF INDIA REP. BY ITS SECRETARY TO GOVT., MINISTRY OF PETROLEUM AND NATURAL GASES, NEW DELHI, & OTHERS v. SRI GAYATHRI AGENCIES in W.A.Nos.521 to 527 of 2000, supported by a decision of Allahabad High Court in M/S. KAMLA MOTORS 6 ENGINEERING WORKS v. IBP CO. LTD. reported in 2001 AIHC 437.

9.4. Even though, it is not in dispute that the contract in question is non statutory in character and it is trite law when a contract entered into between the parties is non statutory and purely contractual, relations are no longer governed by constitutional provisions, but by a legally valid contract, which determines the rights and obligations of the parties inter se, the said rule has got exceptions, viz. whether the decision making authority, exceeds the power or while exercising the power within the limits, the decision making authority acts arbitrarily, perversely and capriciously or commits an error of law which is apparent on the face of the record or commits a breach of rule of natural justice or abuses his power maliciously, in the result, such decision is held to be not only irregular and suffers from procedural impropriety, but also illegal and irrational applying the principles of Wednesbury, vide TATA CELLULAR v. UNION OF INDIA reported in AIR 1996 SC 11 and WHIRLPOOL CORPORATION v. REGISTRAR OF TRADE MARKS reported in 1998 (8) SCC 1. All these decisions factually relate to the question of adulteration or based on the malpractice and adulteration, which arise under a case of contamination or a malpractice or deficiency in quality or violation to observe the provisions of Petroleum Act or the Rules framed therein, or related to under rated sales or over rated sales; or arise on the complaint as to short delivery of petrol; or for having used the petroleum products for any other purpose; or having sold to other dealers whose dealership has already been terminated by the company etc.; but not related to Clause 1 2(a)(i) of the agreement which has given room for the petitioner in the instant case alleging arbitrary, unreasonable exercise of powers by the respondent Corporation. Therefore, the ratio laid down in the decisions relied upon by the respondent will not, in any way, support the contention of the learned counsel for the respondent to hold that the writ petition will not lie against the impugned order.

9.5. That apart, the Apex Court in ONKAR LAL BAJAJ v. UNION OF INDIA reported in (2003) 2 SCC 673, wherein the cancellation of dealership of the petroleum product in en masse was challenged assailing the arbitrary, perverse and capricious act of the Central Government, held that judicial review against such cancellation of the dealership is permissible.

9.6. Question No.1 is answered in positive.

10.1. Question No.2: Whether the order of termination of dealership is sustainable in law?

10.2. It is settled law that while exercising the power of judicial review under Article 226 of the Constitution of India, this Court is obliged to only test the correctness of process of decision taken, but not the decision itself. Therefore, the impugned order of termination of dealership is liable to be tested under judicial review only within a limited scope to find as to the errors in the decision making process, but not as to the decision taken by itself.

10.3. The terms of the contract agreement between the parties dated 25.3.1987 were already referred to in brief.

10.4. Clause 24 of the agreement contemplates 23 terms and conditions to be complied with. Any one of the breach of the said terms and conditions would empower the respondent Corporation to invoke Clause 2 4 of the agreement to terminate the dealership.

10.5. In the instant case, we are only concerned with Clause 12(a)(i) of the agreement which reads as follows.
"Clause 12:

The Dealer/s hereby covenant and agree with the Company as follows:-
(a)(i)To promote the sales of the products marketed by the Company to the satisfaction of the Company.
(ii) To provide facilities, and instal equipment at his/their own expense at the said site as may be considered necessary by the Company, and not to make any alteration thereto. All civil work and purchase of equipment will be to the Company's standard specification and design and approved by the Company.
... "

10.6. Clause 12(a)(i) contemplates the dealer to promote the sales of the products marketed by the Company to the satisfaction of the Company and 12(a)(ii) contemplates the dealer to provide facilities and instal equipments at his own expenses at the site that may be considered necessary and not to make any alternative work and to do all civil work, purchase equipments that would be to the Company's standard specification and the design approved by the Company.

10.7. Clause 13 deals with three terms and conditions to be complied with by the Company. Clause 13(a) is related to a statutory requirement. Clause 13(b) relates to the selling rate to be specified for the product in

question. Clause 13(c) contemplates that the Company would do its best at all times to supply the requirement of petroleum products provided the dealer faithfully observe and perform all the stipulations. It is also provided that the Company however would not be under any liability if prevented from supplying any petroleum products by any cause beyond its control. A closer scrutinisation of the terms (a), (b) & (c) of Clause 13 makes it clear that the agreement is silent as to the obligation ought to be discharged by the Company and the protection given to the dealer in the event of any breach of condition contemplated or undertaken by the Company to advance the business.

10.8. In this regard, I am obliged to refer Clause 24 of the agreement, which reads as follows.

"Clause 24

Notwithstanding anything to the contrary hereinabove contained the Company shall be entitled to terminate this Agreement forthwith and without notice upon or at any time after the happening of any of the events following:-

(a) ...
(b) ...
(c) ...

(d) If the Dealer/s for any reason other than the Company's default fail to maintain supply to the public for any period exceeding twenty four hours."

(emphasis supplied)
Thus, the default of the Company is exempted to be quoted as a ground for terminating the contract.

10.9. Again, a reference to Clause 24(c), (g), (h), (i) to the agreement is relevant. Clause 24(c), (h) and (i) of the agreement if read together makes it clear that the contract would be terminated if the licence is cancelled or revoked. Similarly, Clause 24(g) empowers the Company to terminate the contract if the dealer commits or suffers to be committed any act prejudicial to the interest or good name of the Company. However, what acts are prejudicial to the Company is not mentioned in the terms of the agreement. Therefore, Clause 24(g) of the agreement, in my considered opinion, is vague in implementing. Again Clause 24(h) of he agreement which provides that upon termination of any other agreement between the parties, the dealership would be terminated. This Clause is totally contrary to the provisions of the Contract Act, inasmuch as the violation to any other terms of contract which was not in existence on the date of the agreement could not be brought in as a ground in anticipation to terminate an existing contract, as it would otherwise suffer from uncertainty. This Clause is nothing but a clause in terrorem. Clause 24(i) provides if the dealer fails to perform or observe any stipulation herein contained, which would mean only the stipulation are provided. Therefore, Clause 24(i), in my considered opinion, is intended only to rope in any violation of the stipulations governed under

Clause 12 to quote the same as a ground for termination and hence, Clause 24(i) is totally without any guideline, which attracts arbitrariness.

10.10. Coming to the ground on which the impugned order of termination was passed, viz. Clause 12(a)(i) which enables the respondent Corporation to promote the sale of products marketed by the Company to the satisfaction of the Company. The word "satisfaction of the Company" has to be read only with reference to Clause 12(a)(ii), applying the doctrine of ejusdem generis which contemplates the dealers to satisfy the facilities, instal equipments at their own expenses and not to make any alterations and to do all the civil work and purchase equipments that would be upto the Company's standard specifications and designed and approved by the Company. These alone could be the measures to test the satisfaction of the Company to read in Clause 12(a)(i). Any other explanation to the term "satisfaction of the Company" will again confer arbitrary, unreasonable exercise of power on the Corporation. Now, in the instant case, it is not the case of the Corporation that the petitioner had failed to satisfy any of the said conditions.

10.11. In this regard, I am obliged to refer some of the correspondence that are brought to my notice by the learned counsel for the respondent Corporation, viz. letters dated 24.3.1992, 2.9.1992, 8.9.1992, 21.1.1993 and 30.9.1992.

10.12. In the letter dated 24.3.1992, the respondent Corporation expressed deep concern as to the negative trend in the sale of the petitioner as the same was much below the market potential in the area.

10.13. In the letter dated 2.9.1992, nothing is attributed against the petitioner except informing that he had not chosen to meet the Assistant General Manager at Pondicherry. The said letter proceeds with the threat that penal action would be taken against him. I am unable to understand under what power the Assistant Manager (Sales), proposes to take a penal action against him and for what reason.

10.14. The letter dated 8.9.1992 again proceeds that the Assistant Manager (Sales), proposes to take action for the same reason that the petitioner failed to meet him, in spite of his invitation for a discussion regarding the poor performance.

10.15. In receipt of the said letters, the petitioner, by his letter dated 21.1.1993 referring to the personal discussion with the Assistant Manager (Sales) explained the reason that since VirudhachalamVeppur road was heavily damaged, due to rain and floods, customers had taken a diversion route to go through Ulundurpet and Pennadam and the road on which the retail outlet is located is under repair, and he would, however, take steps to improve the business.

10.16. Presumably, accepting this reason, no further correspondence was made by the respondent Corporation, pursuant to their earlier letters. But, when the tank was found damaged, the petitioner, by his letter dated 21.12.1998, referring to his telecon on 17.12.1998 with respect to the leakage

in the underground tank, requested the Corporation to take immediate and necessary steps to rectify the leakage of the tank, as admittedly, it is the obligation of the respondent Corporation to provide storing and dispensing equipment like underground storage tank and dispensing pumps vide Clause 2 of Appendix I to the Social Objective Scheme.

10.17. As no interest was shown by the respondent Corporation, the petitioner sent another representation dated 6.1.1999 by registered post with acknowledgement due. In the said letter, he specifically mentioned that one Mr. Ajith Kumar inspected the Diesel under ground tank on 25.12.1998 and again he talked to Mr. Ajith Kumar on 1.1.1999 to rectify the High Speed Diesel tank fully and to stop the leakage in the tank. As no action was taken in spite of the receipt of the said registered letter dated 6.1.1999, a legal notice was issued on behalf of the petitioner on 13.4.1999 calling on the Corporation to perform their obligation of contract.

10.18. No doubt, the petitioner would have given the notice for termination of contract by invoking Clause 14 of the agreement, for non performance of the contract on the part of the Corporation. That would not serve any purpose as the petitioner being a beneficiary under Social Objective Scheme, was interested to avail the said benefit permanently, but not to terminate it invoking Clause 14 of the agreement. Hence, he was obliged to repeatedly request the respondent Corporation to rectify the defect in the underground tank.

10.19. Immediately thereafter, he was served with a notice dated 11.8.1999 to the effect that the petitioner had not chosen to improve the business. Even in the said letter, as rightly pointed out by Mr.K.N.Basha, the respondent Corporation has referred to only the letter dated 4.9.1998 and 21.1.1998 etc., but not any such poor performance since March 1993. But, strangely when the respondent had chosen to issue a show cause notice dated 15.10.1999, a vague reference was made to various letters regarding the petitioners dry out and poor performance since March 1993.

10.20. A reference to various letters since 1993, admittedly is not found in the correspondence dated 11.8.1999 which would go to prove that such earlier letters relied upon by the respondent Corporation since March 1993 did not weigh much in their mind while writing the letter dated 11.8.1999. Whatever the reason could be as stated above, the explanation offered by the petitioner on 21.1.1993 had set right the allegations levelled against him with respect to his lack of performance prior to 21.1.1993 and thereafter from January 1993 to 1998 till the petitioner started complaining about the non performance of the obligation on the part of the respondent Corporation, no allegation was made against the petitioner by the respondent Corporation. Nothing is also referred to in the counter affidavit in this regard. The malafide exercise of power by the official of the respondent Corporation, particularly the Assistant Manager, as evident apparent on the face of the record cannot lost the sight of this Court. The ground that the petitioner failed to promote the sales and products marked by the Company to the satisfaction of the Company in the context of reference Clause 12(a)(ii) is not sustainable for the reason that the petitioner had already submitted his

detailed explanation in his letter dated 23.1.1993. On the other hand, the attitude of the Assistant Manager (Sales) threatening him to take penal action against him for not meeting him at Pondicherry, not only lacks jurisdiction, but also proved to be illogical and irrational. The malafide and arbitrary exercise of power by officer concerned has, thus, ultimately snowballed into the impugned disciplinary action. Therefore, I have no hesitation to hold that the impugned order of termination of the dealership is quite unreasonable, perverse and capricious, as it does not stand to the test of ordinary prudent man. Hence, I am obliged to quash the same.

10.21. Question No.2 is answered accordingly.

11.1. Question No.3: To what relief the petitioner is entitled to?

11.2. An argument was advanced by Mr.K. Kumar, learned counsel for the respondent Corporation that pending the above writ petition, the term of contract got expired as the same was only meant for 15 years, as per Clause 2 of the agreement, even though the same could be renewed or extended for another five years, at the option of the Corporation. In this regard, I am obliged to refer Clause 33 of the agreement which provides that if any provision of this Agreement shall be deemed to be contrary to public policy or in contravention of the laws of any jurisdiction or otherwise unenforceable such provision shall be deemed to be of no effect.

11.3. In my considered opinion, when it is not in dispute that the petitioner is a beneficiary under the Social Objective Scheme, he being an unemployed graduate in the year 1987, could not have become the employed graduate pending the dealership or pending the writ petition before this Court. When the Government intend to provide a permanent benefit to certain people, who, themselves, form a distinct class protected under Articles 14 and 21 of the Constitution of India, no clause of an agreement entered into under the said scheme could take away such rights, which are intended to provide a permanent social security, but not an incidental or temporary security, to such class of persons. Therefore, Clause 2 relied upon by the respondent Corporation that the agreement is intended only for 15 years and could be renewed only at the option of the Corporation is nothing but a clause which is contrary to the public policy and the same has to be stuck down as deemed to be of no effect as per Clause 33 of the agreement itself. In any event, the mere fact that the petitioner is a party to the agreement, by itself, would not take away the powers of this Court to extend the arms of justice to the petitioner who suffers by the arbitrary exercise of powers by the respondent-Corporation, by quashing the impugned order, and to direct the respondents to pass appropriate orders for continuing dealership to the petitioner forthwith.

12. The writ petition is allowed. No costs.

Index : Yes
Internet: Yes

kpl

To

1. IBP Company Ltd.
rep. by its General Manager
10, Mayor V.R.Ramanathan Road
Chetpet, Chennai 600 031.

2. The Divisional Manager
(Chennai Division)
IBP Company Ltd.
10, Mayor V.R.Ramanathan Road
Chetpet, Chennai 600 031.

3. The Regional Manager
IBP Company Ltd.
10, Mayor V.R.Ramanathan Road
Chetpet, Chennai 600 031.